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No. 82-2117

In The

Supreme Court of the United States

October Term, 1983

STATE OF CONNECTICUT,
Petitioner,

vs.

FREDERICK SCHONAGEL,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CONNECTICUT

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CONSTITUTIONAL PROVISIONS

Constitution of the United States, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly

CONSTITUTIONAL PROVISIONS — Continued

describing the place to be searched, and the persons or things to be seized.

Constitution of the United States, Amendment XIV, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of the State of Connecticut, article first, §7

The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures; and no warrant to search any place, or to seize any person or thing shall issue without describing them as nearly as may be, nor without probable cause supported by oath or affirmation.

Connecticut Rules Of Court, Rules Of The Supreme Court §3063: "Errors Considered" (1983)

The supreme court shall not be bound to consider a claim unless it was distinctly raised at the trial or arose subsequent to the trial. The supreme court may in the interest of justice notice plain error not brought to the attention of the trial court.

No. 82-2117

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STATE OF CONNECTICUT,
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FREDERICK SCHONAGEL,
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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CONNECTICUT

To The Honorable Justices Of The United States Supreme Court:

The Respondent, FREDERICK SCHONAGEL, hereby files this brief in opposition to the Petition for a Writ of Certiorari to review the judgment of the Supreme Court of Connecticut rendered in this matter on April 26, 1983.

QUESTIONS PRESENTED

Respondent-defendant was convicted of conspiracy to commit arson in the Superior Court of Connecticut. The Supreme Court of the state set the conviction aside finding that the trial court had committed constitutional error by failing to suppress two metal containers seized by the police during a warrantless search of the Respondent's business premises conducted four days after a fire had destroyed the buildings. The questions presented by this Petition for Review are:

1. Whether any exigent circumstances justified the warrantless search of the Respondent's business premises for specifically identified criminal evidence four days after a fire had destroyed the buildings.

2. Whether the Connecticut Supreme Court erred in concluding that the trial court had correctly determined that the Respondent had retained a legitimate expectation of privacy in whatever remained of his burnt property at the time of the search.

3. Whether the Connecticut Supreme Court's decision rested on independent and adequate state grounds.

STATEMENT OF THE CASE

FACTS

During the pre-dawn hours of Friday, September 23, 1977, a violent explosion followed by an intense fire destroyed two commercial buildings constituting "Tire City", an automobile tire sales and service facility owned by the Respondent in Bridgeport, Connecticut. The intensity of the blaze led firefighters to believe that an accelerant had to be involved. Despite this conclusion, however, the record does not reveal that any authority commenced an immediate arson investigation or applied for a judicial warrant to do so.

Police officers patrolling the area nearby heard the explosion, saw the "globe of flames" and rushed to the scene. Upon arrival, they noticed an individual being dragged out from behind one of the buildings whose clothes smelled strongly of gasoline. This person was 15-year-old John Velasquez of Bridgeport, who had been injured by the explosion. The officer in charge supervised the boy's removal to a hospital and also stationed a patrolman to watch the premises around the clock. This police guard remained at the site through Wednesday, September 28th.

A building official from the City of Bridgeport arrived the following morning. Without consulting the owner, he ordered the buildings demolished because their burnt-out state endangered the safety of the people in the area. As part of the contract, the wrecker was also required to remove the debris from the scene. The demolition, however, did not commence immediately because representatives of the insurance carrier requested a postponement of the wrecking in order to obtain photos and measurements of the two

buildings involved. The request was granted and no work was done until the insurance company gave the signal to proceed several hours later. The wreckers were at liberty to begin removing the debris concurrent with the demolition but chose not to do so. Instead, they commenced removal of the rubble sometime in the forenoon of Monday, September 26th. By that time, John Velasquez had recovered sufficiently to be questioned by the police. He stated that he and his brother had set the blaze at the owner's request. They allegedly caused the explosion by igniting gasoline contained in several containers provided by the Respondent.

When the police heard mention of the gasoline containers, an officer was immediately dispatched to check the ruins of "Tire City" for this incriminating evidence. The search commenced on midday of Monday, September 26th and continued through Tuesday, September 27th. No attempt was made to secure a search warrant at any time during this two day period. The police also made no attempt to halt the demolition or the removal of the debris. As a result of the search, the police seized two metal containers on September 26th and some brick and soil samples the following day. Subsequently, the Respondent was arrested and charged with conspiracy to commit arson.

At his trial, Frederick Schonagel moved to suppress all of the evidence seized pursuant to the warrantless search. The trial court, however, suppressed only the brick and soil samples taken on the second day of the search (P.A. 16)[1] and

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[1]References to the Petitioner's Brief and Appendix will be as follows:

Petitioner's Brief (P.B.)
Petitioner's Appendix (P.A.)

ruled that the warrantless seizure of the metal containers was justified by exigent circumstances. The judge apparently accepted the state's argument that the demolition and clearing of the site required immediate action by the police in order to prevent the potential loss of criminal evidence.

Following his conviction, the Respondent appealed the trial court's ruling to the Connecticut Supreme Court, which found error and ordered a new trial.

PROCEDURAL BACKGROUND

By amended information dated June 11, 1980, the Respondent was charged with conspiracy to commit arson in the second degree in violation of Connecticut General Statutes §§53a-48 and 53a-112. (P.A. 3) On December 17, 1979, he had filed a motion to suppress evidence seized during a warrantless search of his commercial premises on September 26, 1977. (P.A. 17) On July 2, 1980, the trial court rendered an oral decision granting the motion in part and denying it in part. (P.A. 16)

The Respondent was tried to a jury which rendered a verdict of guilty on July 17, 1980, and judgment entered on November 7, 1980. The Respondent appealed his conviction to the Supreme Court of Connecticut charging, **inter alia,** that the trial court's failure to suppress the metal containers seized on September 26, 1977, violated his rights under the applicable provisions of both the Constitution of the United States and the Constitution of the State of Connecticut. (P.A. 4)

On April 26, 1983, the Connecticut Supreme Court reversed the conviction ordering a new trial. **State v. Schonagel,** 189 Conn. 752, 459 A.2d 106 (1983). (P.A. 1-15)

The court found that under the circumstances the state had not met its burden of demonstrating the existence of sufficient exigent circumstances to justify the warrantless search. It also ruled that the trial court had not committed plain error by implicitly finding that the owner of burnt premises retains a legitimate expectation of privacy in his property.

ARGUMENT

SUMMARY OF ARGUMENT

The Respondent, Frederick Schonagel, respectfully urges this Court to deny the Petition for a Writ of Certiorari because the judgment of the Supreme Court of Connecticut regarding the constitutional issues raised by the warrantless search of the Respondent's business premises is in complete harmony with prior interpretations of the United States Constitution made by this Court. Since the decision is also compatible with the case law of other state and federal courts, it has not contributed to any conflict among jurisdictions, thereby requiring resolution by this Court. **See N.L.R.B. v. Pittsburgh Steel Co.,** 340 U.S. 498, 502 (1951).

In attacking the judgment of the Connecticut tribunal, the Petitioner suggests that this Court needs to redefine its decision in **Michigan v. Tyler,** 436 U.S. 499 (1978). However, the rules established in that case clearly and concisely delineated the parameters of exigent circumstances permitting warrantless searches of fire sites. That case also established that the owner of a burnt building retains his privacy rights in the premises. **Tyler** has caused no conflict in later decisions, and therefore, requires no clarification.

Lastly, since the decision of the Connecticut Supreme Court rests on both federal and state constitutional principles, independent and adequate state grounds support that ruling, militating against further review by this Court.

I. No Exigent Circumstances Justified The Warrantless Search Of The Respondent's Business Premises For Specifically Identified Criminal Evidence Four Days After A Fire Had Destroyed the Buildings.

In appealing his conviction, the Respondent stated that the trial court's failure to suppress all of the evidence seized pursuant to the warrantless search violated his rights under the fourth and fourteenth amendments to the United States Constitution as well as article first, §7 of the Constitution of Connecticut. The Petitioner alleged that the exigent circumstances exception to the warrant requirement of the fourth amendment justified the police action in this case. The gist of the prosecution's argument was that since the destroyed premises were being cleared of the debris from the fire "the police did not have the luxury of time to seek a warrant" if it wished to prevent the loss of criminal evidence. Therefore, they claimed that the good faith belief of the officers that the wreckers might remove or destroy the gasoline containers mentioned by Velasquez created a sufficient exigency to render the search and seizure reasonable. (P.B. 7) However, both in its brief and on oral argument the state failed to explain why, in light of the early suspicion of arson, the police had failed to secure a warrant to conduct an investigation during the four days which had elapsed since the fire.

In rejecting the Petitioner's exigency excuse, the justices of the Connecticut Supreme Court first noted the

well-settled principle that "anyone claiming an exemption from [the warrant] requirement bears the burden of showing the need for it," **State v. Schonagel,** 189 Conn. 752, 758, 459 A.2d 106, 110 (1983) (P.A. 6), and "that the existence of exigent circumstances is a question of fact." **Id.** at 762, 459 A.2d at 112. (P.A. 9) Accepting the Petitioner's arguments regarding the possibility of the imminent removal of evidence from the fire site, the court nevertheless denied the state's exigency claim:

> The present record rebuts exigency because it contains nothing to show that it was impossible or unreasonable for the police to obtain a temporary halt to the removal of debris while they went to get a warrant. Apparantly, the police made no such effort. The previous Friday, according to the evidence, razing of the burnt-out structure had been halted at the request of insurance investigators, even after the building inspector had determined the structure to be a hazard to the public. There was no evidence that, on the Monday of the search, a delay in completion of the removal work would have endangered the public safety, would have created additional danger, or would otherwise have been unreasonable. ... Since a police officer was already on the premises, he could have ensured that no evidence would be removed during the short time that obtaining a warrant would have taken. ... We note, as have other courts, that it is more difficult to demonstrate exigency when the claimed risk relates to the fear of removal rather than of destruction of evidence that the police want to seize without a warrant. (citations omitted)

Id. at 763, 459 A.2d at 112. (P.A. 10) Therefore, the court

concluded unanimously that "when there are reasonable alternatives to a warrantless search, the state has not satisfied its burden of proving exigent circumstances." **Id.**

The Petitioner implies that the Connecticut Supreme Court's decision is inconsistent with the rulings of this Court and that "the scope of **Michigan v. Tyler,** 436 U.S. 499 (1978), could be redefined with more precision as to the variants of exigency. . . . " (P.B. 6) However, the Petitioner has failed to state exactly which decisions of this Court the **Schonagel** decision supposedly contravenes.

In **Tyler** this Court enunciated that officials do not need a warrant to enter a burning building to fight the blaze and to investigate its cause. However, all later investigative entries and searches specifically aimed at gathering incriminating evidence are subject to constitutional probable cause and warrant requirements. 436 U.S. at 511-12. This clear and simple rule has been applied consistently and uniformly by both federal and state courts. **See Smith v. Heath,** 691 F.2d 220, 224 (6th Cir. 1982); **Donovan v. Wollaston Alloys, Inc.,** 695 F.2d 1, 5 (1st Cir. 1982); **Satchell v. Cardwell,** 653 F.2d 408, 412 (9th Cir. 1981), **cert. denied,** 102 S.Ct. 1026 (1982); **United States v. Jamieson-McKames Pharmaceuticals,** 651 F.2d 532, 541 (8th Cir. 1981), **cert. denied,** 102 S.Ct. 1709 (1982); **Burkart Randall Division of Textron, Inc. v. Marshall,** 625 F.2d 1313, 1318 (7th Cir. 1980); **Blackie's House of Beef, Inc. v. Castillo,** 659 F.2d 1211, 1225 n.16 (D.C. Cir. 1981), **cert. denied,** 455 U.S. 940 (1982); **United States v. Johnson,** 524 F. Supp. 199, 204 (D. Del. 1981); **United States v. Lawson,** 502 F. Supp. 158, 165 (D. Md. 1980); **Cronk v. State,** ____ Ind. ____ , 443 N.E.2d 882, 885 (1983); **People v. Richards,** 94 Ill. 2d 92, 445 N.E.2d 319, 322 (1983); **Commonwealth v. Frodyma,** 386

Mass. 926, 436 N.E.2d 925, 932 (1982); **People v. Bradley,** 132 Cal. App. 3d 737, 183 Cal. Rptr. 434, 438 (1982); **State v. Passerin,** 449 A.2d 192, 195-196 (Del. 1982). Therefore, there is no conflict which this Court needs to resolve.

Furthermore, the Petitioner did not claim that the fire at the Respondent's premises created the exigency on which it relies in this case. Therefore, the exigency issue addressed by **Tyler** is not relevant to this case and the Petitioner's request that this Court redefine that case is misplaced.

II. The Connecticut Supreme Court Did Not Err In Concluding That The Trial Court Had Correctly Determined That The Respondent Had Retained A Legitimate Expectation of Privacy In Whatever Remained Of His Burnt Property At The Time Of The Search.

Both at trial and on appeal, the Petitioner argued that the burnt and nearly demolished condition of the premises divested the Respondent of any reasonable expectation of privacy, thereby legitimizing the warrantless search. The Connecticut Supreme Court rejected this argument. First, it noted that by suppressing the brick and soil samples, the trial judge had necessarily concluded as a matter of fact that the owner had not relinquished or lost his expectation of privacy in the premises. Since the state had not objected to that portion of the judge's ruling on appeal, the court indicated that it could overturn that finding "only if we found it to be plain error. The record does not support such a conclusion." 189 Conn. at 759, 459 A.2d at 110. (P.A. 7) Under the applicable Connecticut Rules of Court, the supreme court "may in the interests of justice notice plain error not brought to the attention of the trial court."

Connecticut Rules of Court §3063 (1983); **Valley v. Fazzina,** 187 Conn. 423, 428, 446 A.2d 1068, 1070 (1982). The Connecticut Supreme Court has established that only two situations may trigger plain error review. The first is "where a new constitutional right not readily foreseeable has arisen between the time of trial and appeal.... The second 'exceptional circumstance' may arise where the record adequately supports a claim that a litigant has clearly been deprived of a fundamental constitutional right and a fair trial." **State v. Evans,** 165 Conn. 61, 70, 327 A.2d 576, 581 (1973); **State v. Nardini,** 187 Conn. 513, 516, 447 A.2d 396, 398 (1982); **Cf. Chaplin v. Balkus,** 189 Conn. 445, 447, 456 A.2d 286, 287 (1983). The same plain error reasoning also applies in federal courts. **See United States v. McCaskill,** 676 F.2d 995, 1002 (4th Cir.), **cert. denied,** 103 S.Ct. 381 (1982). [The claimed error must be a "fundamental error, something so basic, so prejudicial, so lacking in its elements that justice cannot have been done ... ."] This reasoning makes it clear that the rule is concerned with the fundamental rights of an individual, not the state. Furthermore, the Petitioner has failed to indicate how the fairness of the trial was affected by the trial court's factual finding that the Respondent had not relinquished his privacy rights in his burnt building.

The plain error issue was neither briefed nor argued to the Connecticut Supreme Court and the Petitioner raises it for the first time in this Petition for Review. However, on its own motion, that court considered the matter and concluded that no plain error had been committed.

In examining the record the justices recognized that, at the time of the search, "the condition of the premises resulted from both the fire and the dismantling operation

ordered by the Bridgeport Building Inspector." 189 Conn. at 761, 459 A.2d at 111. (P.A. 8) Citing both **Tyler** and its own state precedent, the court explained that a fire does not eliminate the owner's reasonable expectation of privacy in his building. **Id.** Similarly, the administratively ordered wrecking operation was held to not necessarily eradicate the owner's privacy rights. **Id.** (P.A. 9)

The court then addressed the Respondent's subjective expression of his expectation of privacy. This Court stated recently that an individual's own conduct must be considered in determining whether he has exhibited a subjective expectation of privacy. **United States v. Knotts,** ____ U.S. ____, 103 S.Ct. 1081 (1983); **United States v. Brock,** 667 F.2d 1311, 1320 n.8 (9th Cir. 1982); **Smith v. Maryland,** 442 U.S. 735, 740 (1979). The Connecticut justices noted that at the time of the search the Respondent had recommenced doing business on the premises and that there was no indication of a "consensual abandonment" of the right to privacy. 189 Conn. at 760, 459 A.2d at 111. (P.A. 8) Therefore, they concluded:

> In finding the defendant retained such an expectation, the trial court might well have concluded that in the confused aftermath of the blaze the defendant did not see the full implication, as far as his privacy interests were concerned, of the dismantling operation. His presence on the premises, at the time of the search, is as consistent with exercise of his right to privacy as it is with his abandonment of any such expectation. We cannot say, under the circumstances, that the court's finding was plainly in error.

189 Conn. at 762, 459 A.2d at 111-112. (P.A. 9)

The Petitioner has cited no authority — other than its own interpretation of the facts — for the proposition that this finding "was plain error of constitutional significance." It is well-settled that this Court will not grant a Writ of Certiorari merely to review evidence and draw inferences from it. **Crumady v. The J.H. Fisser,** 358 U.S. 423, 429 (1959); **General Talking Picture Corp. v. Western Electric Co.,** 304 U.S. 175, 178 (1937).

III. The Connecticut Supreme Court's Decision Rested On Independent And Adequate State Grounds.

As noted previously, the Connecticut Supreme Court's decision in this case was fully consistent with this Court's prior interpretations of the fourth and fourteenth amendments to the United States Constitution. However, even if it were assumed, **arguendo,** that the decision of the court went beyond the requirements of the federal constitution, the Petition for Review should be denied because the Connecticut court clearly relied on the Connecticut Constitution to at least the same degree it relied on federal law. The justices prefaced their analysis of the warrantless search by stating that "the fourth amendment, and its state counterpart, article first, §7 forbid unreasonable searches and seizures." 189 Conn. at 758, 459 A.2d at 110. (P.A. 6) They then cited both federal and state authorities for the legal principles discussed. The Connecticut court has explained previously that when the provisions of the state and the federal constitutions are identical, its decisions regarding issues raised by both also rely on both. **Roundhouse Construction Corp. v. Telesco Masons Supplies Co., Inc.,** 170 Conn. 155, 157, 365 A.2d

393, 394, **cert. denied,** 429 U.S. 889 (1976). The court also noted in **Roundhouse** that in such an instance it looks to the decisions of the United States Supreme Court as "very persuasive if not controlling authority." **Id.** at 158, 365 A.2d at 394. In a later case, the justices explained that the "due process clause of the Connecticut Constitution shares but is not limited by the content of its federal counterpart." **Fasulo v. Arafeh,** 173 Conn. 473, 475, 378 A.2d 553, 554 (1977). However, as in **Schonagel,** the court cited both state and federal cases to support this conclusion. **See also Society for Savings v. Chestnut Estates, Inc.,** 176 Conn. 563, 569 n.5, 576 n.9, 409 A.2d 1020, 1023 n.5, 1026 n.9 (1979).

A similar approach is taken by other states when state constitutional provisions parallel their federal counterparts. **See, e.g., State v. Fitzsimmons,** 94 Wash. 2d 858, 620 P.2d 999, 1000 (1982); **People v. Krivda,** 8 Cal. 3d 623, 504 P.2d 457, 105 Cal. Rptr. 521, **cert. denied,** 412 U.S. 919 (1973); **People v. Peques,** 412 Mich. 851, 312 N.W.2d 83, 84 (1981); **People v. Beavers,** 393 Mich. 554, 227 N.W.2d 511, 516, **cert. denied,** 423 U.S. 878 (1975). ["While the result reached today reflects an analysis of Federal case authority, our conclusion is based upon the Michigan Constitution and the protection afforded the people of this state against unreasonable searches and seizures."]; **Commonwealth v. Campana,** 455 Pa. 622, 314 A.2d 854, 855, **cert. denied,** 417 U.S. 969 (1974):

> There are, of course, indications in some of the opinions supporting our judgments that a basis for the judgments was to be found in federal constitutional problems. However, there are also separate reason [sic] advanced for the result that do not stand on a view of federal constitutional

requirements.

> Our supervisory power over state criminal proceedings is broad, and this Court need not, as a matter of state law, limit its decision to the minimum requirements of federal constitutional law.

This must be contrasted with the situation in which the state court makes no reference to state statutory or constitutional grounds and is merely analyzing a United States Supreme Court decision. **See Fare v. Michael C.,** 442 U.S. 707, 717, **reh'g denied,** 444 U.S. 887 (1979).

Even if this Court determines that Connecticut restricts the police to a greater extent than is required by the federal constitution, it cannot alter the state's policy since it is supported by state law. This Court has repeatedly recognized that its interpretation of the United States Constitution does not "limit the authority of the State to exercise its police power or its sovereign right to adopt in its own Constitution individual liberties more expansive than those conferred by the Federal Constitution." **Pruneyard Shopping Center v. Robins,** 447 U.S. 74, 81 (1980); **Connecticut v. Johnson,** ____ U.S. ____, 103 S.Ct. 969, 974 n.9 (1983) ["State courts, of course are free to interpret their own constitutions and laws to permit fewer applications of the harmless error rule than does the Federal Constitution."]; **Martinez v. California,** 444 U.S. 277, 282 (1980). The United States Constitution simply "defines the minimum level of rights that citizens are afforded." **Cologne v. Westfarms Associates,** 37 Conn. Supp. 90, 100, 442 A.2d 471, 477 (1982). However, in **Minnesota v. Clover Leaf Creamery Co.,** 449 U.S. 456 (1981), the Justices of this

Court explained that while a "state court may, of course apply a more stringent standard of review as a matter of state law 'under the state's equivalent to the federal constitution,' it is not free to impose greater restrictions as a matter of federal constitutional law than this Court has imposed." **Id.** at 460 n.6. **See also Fare v. Michael C., supra; North Carolina v. Butler,** 441 U.S. 367, 377 (1979); **Oregon v. Hass,** 420 U.S. 714, 719 (1975).[2] Since the restrictions on the police imposed by **Schonagel** were based on Connecticut rather than purely federal precedent, they need not be reviewed by this Court.

Even prior to this Court's decision in **Pruneyard,** the State of Connecticut had explicitly asserted its right to go beyond the minimum requirements of federal law in the area of individual constitutional rights:

> The equal protection clauses of both the United States and Connecticut constitutions having a like meaning, the decisions of the United States Supreme Court defining federal constitutional rights are at the least, persuasive authority, although we fully recognize the primary independent vitality of the provisions of our own constitution. Paraphrasing the language of the California Supreme Court in **People v. Longwill,** 14 Cal. 3d 943, 951 n.4, 538 P.2d 753: In the area of fundamental civil liberties — which includes all protections of the declaration of rights contained in article first of the Connecticut constitution — we sit as a court of last resort, subject only to the qualification that our interpretations may not

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[2]On July 5, 1983, the Connecticut Supreme Court implied its willingness to expand the rights guaranteed by the sixth amendment on state constitutional grounds in **State v. Biller,** 190 Conn. 594, 618 n.12, ____ A.2d ____, ____ n.12 (1983).

> restrict the guarantees accorded the national citizenry under the federal charter. In such constitutional adjudication, our first referent is Connecticut law and the full panoply of rights Connecticut residents have come to expect as their due. Accordingly, decisions of the United States Supreme Court defining fundamental rights are persuasive authority to be afforded respectful consideration, but they are to be followed by Connecticut courts only when they provide no less individual protection than is guaranteed by Connecticut law.

Horton v. Meskill, 172 Conn. 615, 641-42, 376 A.2d 359, 371 (1977). Similarly in **Fasulo v. Arafeh,** 173 Conn. 473, 378 A.2d 553 (1977), the court granted mental patients rights arguably exceeding existing federal safeguards, once again noting that "[t] he due process clause of the Connecticut constitution shares but is not limited by the content of its federal counterpart." **Id.** at 475, 378 A.2d at 554. **See also Doe v. Maher,** 8 C.L.T. No. 18 at 7 (May 3, 1982) [Medicaid payments for abortions]: **Fox v. First Bank,** 8 C.L.T. No. 6 at 14 (Feb. 8, 1982) [Due process requirements in repossessing automobile].

The use of state constitutional provisions to expand civil liberties is also reflected in the decisions of other states. **See, e.g., State v. Opperman,** 247 N.W.2d 673 (S.D. 1976) [rejecting this Court's decision in **South Dakota v. Opperman,** 428 U.S. 364 (1976) regarding inventory searches of automobiles]; **State v. Vernon,** 385 So. 2d 200, 204 (La. 1980) [Proof beyond reasonable doubt required for finding waiver of privilege against self-incrimination]; **Commonwealth v. Bussey,** 486 Pa. 221, 404 A.2d 1309

(1979); **State v. Benoit,** ____ R.I. ____, 417 A.2d 895 (1980); **State v. Miyasaki,** 62 Hawaii 269, 614 P.2d 915 (1980); **Reeves v. State,** 599 P.2d 727, 734 (Alaska 1979); **State v. Helfrich,** 183 Mont. 484, 600 P.2d 816 (1979). In **Commonwealth v. Campana,** 455 Pa. 622, 314 A.2d 854, **cert. denied,** 417 U.S. 969 (1974), the court invoked its judicial supervisory powers rather than the state constitution to adopt a "same transaction" test for double jeopardy analysis. **See also State v. Borst,** 278 Minn. 388, 154 N.W.2d 888 (1967).

Similarly, Connecticut's decision to develop its own state exigent circumstances test is demonstrated in a case decided on June 21, 1983. **State v. Guertin,** 190 Conn. 440, ____ A.2d ____ (1983). After a lengthy discussion of the various existing "tests" for finding exigent circumstances, the court adopted the rule developed by the Supreme Court of Appeals of West Virginia in **State v. Canby,** 252 S.E.2d 164, 167 (W.Va. 1979) requiring a "totality of circumstances" approach to determine the reasonableness of police conduct. 190 Conn. at 453. The court's criterion is "what a **reasonable,** well-trained police officer would believe, not what the arresting officer actually did believe." **Id.** (emphasis original) The **Canby** rule also provides that "unnecessary police-created exigencies are not exceptions to the warrant requirement." **Id.** Noting that **Canby** "was decided on the basis of the West Virginia Constitution," **Id.,** the Connecticut Supreme Court reiterated:

> We have in the past, including the recent past, expressed the view that article first §7 of the Connecticut Constitution provides the same protection as the fourth amendment. ... In any event, since the **Canby** test closely reflects our latest expression on the kinds of circumstances

> which would justify a warrantless entry into a building; see **State v. Schonagel,** supra, 763; we are disposed to follow it. (citations omitted)

190 Conn. at 454.

Since **Guertin** cited **Schonagel** and contains a marked absence of federal precedent, it can be inferred that the court also did not base the **Schonagel** decision solely on federal constitutional grounds. Therefore, the decision is supported by adequate state grounds and does not need to be reviewed by this Court, even if the enunciated rules exceed minimum federal constitutional parameters.

CONCLUSION

For the reasons stated above, this Court should decline to issue a Writ of Certiorari to the Supreme Court of Connecticut to review the issues raised in this Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that three (3) copies of the foregoing Brief in Opposition to the Petition for Writ of Certiorari were mailed, postage pre-paid, on this 22nd day of July, 1983, to Richard F. Jacobson and Donald A. Browne, Office of the State's Attorney, 1061 Main Street, Bridgeport, Connecticut 06604.

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